

Wilmington, Delaware
April 16, 2009

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE

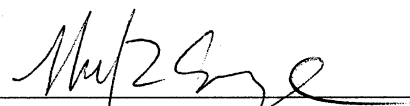
CITY OF WILMINGTON that the Council authorizes and approves that certain CSO Improvement Agreement between the City of Wilmington and Christiana Care Health Services, a copy of which is attached hereto as Exhibit "A" and made a part hereof, for the purpose of providing up to \$1,000,000 to Christiana Care Health Services for the installation of storm water system improvements in connection with the renovation and redevelopment of Wilmington Hospital.

BE IT FURTHER RESOLVED that Council authorizes the Commissioner of Department of Public Works to execute the CSO Improvement Agreement and any other documents that are necessary to effectuate the intent of such agreement.

Passed by City Council
April 16, 2009

ATTEST: 
City Clerk

Approved as to form this 7th
day of April, 2009


Senior Assistant City Solicitor

SYNOPSIS: This Resolution approves the CSO Improvement Agreement between the City and Christiana Care so that the City will provide up to \$1,000,000 for certain storm water system improvements that will reduce the usage of Combined Sewer Overflow #23.

#3144

Sponsors:

Council
Members
Shabazz
Potter

CSO IMPROVEMENT AGREEMENT

THIS CSO IMPROVEMENT AGREEMENT (the "Agreement") is made this ____ day of _____, 2009 (the "Effective Date"), between the **CITY OF WILMINGTON**, a Delaware municipal corporation ("City") and **CHRISTIANA CARE HEALTH SERVICES**, a Delaware corporation ("Christiana Care").

WHEREAS, Christiana Care owns that parcel of land and the improvements thereon known as "Wilmington Hospital", being Parcel No. 26-028.20-001, which parcel has an address of 501 W. 14th Street, Wilmington, Delaware ("Wilmington Hospital");

WHEREAS, Christiana Care intends to renovate and redevelop Wilmington Hospital;

WHEREAS, stormwater from Wilmington Hospital currently drains into the City of Wilmington's Combined Sewer Overflow #23 ("CSO 23");

WHEREAS, City is seeking to reduce the amount of combined sewer that passes through CSO 23;

WHEREAS, as part of the renovation and redevelopment of Wilmington Hospital, Christiana Care has agreed to install and construct an improved storm water system, which is more particularly described on Exhibit "A" attached hereto (collectively, the "CSO Improvement Project"), at a proposed cost of up to \$1,000,000; and

WHEREAS, following the completion of the CSO Improvement Project, 9.2 acres of Wilmington Hospital will no longer utilize CSO 23;

WHEREAS, Christiana Care has requested that City provide it with funding in the amount of up to \$1,000,000 to cover the cost of the CSO Improvement Project.

NOW, THEREFORE, in consideration for the aforesaid premises, and further consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. City Funds.

1.1 Subject to the terms and conditions of this Agreement, City hereby agrees to provide Christiana Care with funding in the amount of up to One Million Dollars (\$1,000,000) (the "City Funds"). The City Funds shall only be used to cover the costs associated with the CSO Improvement Project.

1.2 Except as required by Section 1.3 of this Agreement, City agrees to advance the City Funds in two, equal installments of \$500,000. If there have not been any Events of Default (as defined in Section 3.1 of this Agreement) or events, which with the passage of time or the giving of notice, shall constitute an Event of Default, then the first installment shall be advanced to Christiana Care within sixty (60) days following City's receipt of invoices and supporting documentation that demonstrate that Christiana Care has completed 50% of the CSO Improvement Project and incurred actual costs of at least \$500,000 on the CSO

Improvement Project. If there have not been any Events of Default (as defined in Section 3.1 of this Agreement) or events, which with the passage of time or the giving of notice, shall constitute an Event of Default, then the second installment shall be advanced to Christiana Care within sixty (60) days following City's receipt of invoices and supporting documentation that demonstrate that Christiana Care has completed the CSO Improvement Project and incurred actual costs of at least \$1,000,000 (subject to reduction under Section 1.3 of this Agreement) on the CSO Improvement Project.

1.3 To the extent that the total cost of installing and constructing the CSO Improvement Project is less than \$1,000,000, then the amount of the City Funds shall be appropriately reduced. Any reduction of the City Funds amount shall be taken from the second payment installment. To the extent that the actual cost of the CSO Improvement Project exceeds the amount of the City Funds, then the City shall not be required to increase the amount of the City Funds or cover any of the excess costs.

2. Representations, Warranties, Covenants and Agreements. Christiana Care represents, warrants, covenants and agrees, knowing that City will rely on the representations, warranties, covenants and agreements, as incentives to make the City Funds, as follows:

2.1 Organization and Good Standing. Christiana Care (a) is duly organized, validly existing and in good standing under the laws of the State of Delaware; and (b) has the power and authority to carry on its business as now conducted.

2.2 Power and Authority; Validity of Agreement. Christiana Care has the power and authority to enter into and perform under this Agreement; and all actions necessary or appropriate for Christiana Care's execution and performance of the Agreement have been taken, and, upon its execution, the same will constitute the legal, valid and binding obligation of Christiana Care to the extent it is a party thereto, enforceable in accordance with their respective terms.

2.3 No Violation of Laws or Agreements. The making and performance of the Agreement by Christiana Care will not violate any provisions of any law or regulation, or result in any breach or violation of, or constitute a default under, any agreement or instrument by which Christiana Care or its property may be bound.

2.4 Insurance. Christiana Care shall keep and maintain all of its property and assets in good order and repair and fully covered by insurance.

2.5 Notice to City. Christiana Care shall notify City in writing promptly of the (a) institution of any litigation, (b) the commencement of any administrative proceedings, (c) the happening of any event or the assertion or threat of any claim against CSO Improvement Project or (d) the occurrence of any Event of Default.

2.6 Costs and Expenses. Christiana Care shall pay or reimburse City for all reasonable out-of-pocket costs and expenses (including but not limited to attorneys' fees and disbursements) City may pay or incur in connection with any waiver, consent or amendment to this Agreement and all other documentation related thereto, the making of the City Funds

hereunder and the enforcement of the same. All obligations provided for in this Section 2.6 shall survive any termination of this Agreement.

2.7 Compliance with Law; Notification. Christiana Care shall comply with all applicable local, state and federal laws and regulations, including without limitation environmental laws and regulations, and the provisions and requirements of all franchises, permits, certificates of compliance and approvals issued by regulatory authorities.

2.8 Other Information. Christiana Care shall provide City with any other documents and information, financial or otherwise, reasonably requested by City, including but not limited to, cost certifications and release of mechanic's liens for the CSO Improvement Project.

2.9 Publicity and Identification of Documents. Christiana Care shall mention or include the name of the City in a conspicuous manner in any advertisement or publicity of any type pertaining to the CSO Improvement Project, which advertisement or publicity must first be approved by City prior to use.

2.10 DBE's. Christiana Care shall use good faith efforts and will cause its contractors and subcontractors to use good faith efforts to maximize disadvantaged business enterprises ("DBE") participation in the CSO Improvement Project. Christiana Care and its contractors and subcontractors will use good faith efforts to achieve a goal of twenty percent (20%) participation in respect of contracts for the CSO Improvement Project. All DBE's associated with the CSO Improvement Project must be certified, or be capable of being certified, as DBE's by the City of Wilmington Office of Economic Development.

2.11 Right to Audit. City shall have the right from time to time during normal business hours, with reasonable prior notice, to review, make copies of and audit the records of Christiana Care relating to the costs of the CSO Improvement Project. City shall be permitted to conduct such review or audit for any purpose deemed necessary by the city auditor of the City of Wilmington in connection with the exercise of the auditor's powers and duties as set forth in 3 Wilm. C. (Charter) Sec. 6-300. Christiana Care will make available to the City, and its designees, construction contracts with subcontractors, laborers, and materialmen, invoices and other cost information reasonably requested by the City.

2.12 Construction.

a. Christiana Care covenants that the CSO Improvement Project shall be completed within one (1) year following the Effective Date. Upon the completion of the CSO Improvement Project, Christiana Care will notify the City's Department of Public Works and schedule an inspection of the CSO Improvement Project.

b. City, and any of their agents or representatives, shall have the right to inspect and verify any work associated with the CSO Improvement Project.

c. The CSO Improvement Project shall be built in accordance with the plans listed on Exhibit "A" attached hereto, and there shall be no modifications in the design,

construction methods or materials comprising the CSO Improvement Project without the prior written consent of the City's Department of Public Works.

d. Christiana Care shall provide the City's Department of Public Works with access to the site so that they may test and verify that the CSO Improvement Project meets or exceeds the Department of Public Works' specifications.

e. Christiana Care shall deliver to City a warranty that shall guarantee the CSO Improvement Project against any defects in workmanship and materials for a period of one (1) year from the date of completion and acceptance by the City of Wilmington Department of Public Works.

2.13 Dedication Upon Completion. Upon completion of the CSO Improvement Project, Christiana Care shall seek to dedicate and convey legal title to the CSO Improvement Project to the City at no cost or expense to City. Christiana Care hereby agrees to fully cooperate in such dedication and conveyance and to execute any documents, including but not limited to, easement agreements, which are necessary for the dedication, conveyance, repair or replacement of the CSO Improvement Project. In connection with any dedication, Christiana Care shall (a) provide City with documentation and test results for the CSO Improvement Project that verify that the CSO Improvement Project meets or exceeds the City of Wilmington Department of Public Works's, specifications, including but not limited to, as-built drawings for the CSO Improvement Project, (b) provide City with a warranty that shall guarantee the CSO Improvement Project against any defects in workmanship and materials for a period of one (1) year from the date of dedication and (c) indemnify, defend and hold harmless the City of Wilmington for any and all damages and injury (including death) to persons or property arising from defective construction or installation of the CSO Improvement Project for a period of one (1) year from the date of dedication of the CSO Improvement Project, excluding the gross negligence or willful misconduct of the City of Wilmington.

2.14 Licenses and Permit Fees. Christiana Care shall pay all costs, without a waiver from the City of Wilmington, for City of Wilmington licenses, permits or approvals required for the construction of the CSO Improvement Project. Christiana Care shall require any contractor or subcontractor working on the CSO Improvement Project to obtain the required business licenses from the City of Wilmington prior to commencing any work on the CSO Improvement Project.

3. Rights and Remedies of City

3.1 If Christiana Care shall default in the performance of any agreement or covenant contained in this Agreement and such default shall continue uncured for thirty (30) days, or such longer period that shall not exceed one hundred twenty days if the default cannot be cured within thirty (30) days and Christiana Care notifies the City and diligently seeks to cure such default, after the earlier to occur of (i) knowledge of such default by Christiana Care or (ii) notice thereof to Christiana Care by City (an "Event of Default"), then, at the election of City, City shall have all rights and remedies available at law or in equity, including but not limited to, the right to seek the repayment of the City Funds or require specific performance of this Agreement, all of which shall be cumulative in nature.

4. Miscellaneous

4.1 Christiana Care hereby agrees to indemnify and defend City and its officials, employees, agents, contractors and counsel from, and hold each of them harmless against, any and all losses, liabilities, claims, damages, interest, judgments, costs, or expenses, including without limitation fees and disbursements of counsel, imposed on, incurred by or asserted against any of them by any person arising out of or in connection with or by reason of the CSO Improvement Project, this Agreement and the making of the City Funds, except for the gross negligence or willful misconduct of City. All obligations provided for in this Section shall survive any termination of this Agreement.

4.2 This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns and shall be governed as to their validity, interpretation and effect by the laws of the State of Delaware, without regard to conflicts of law principles.

4.3 If City shall waive any power, right or remedy arising hereunder or under any applicable law, such waiver shall not be deemed to be a waiver by City of the later occurrence or recurrence of any of said events with respect to City. No delay by City in the exercise of any power, right or remedy shall, under any circumstances, constitute or be deemed to be a waiver, express or implied, of the same and no course of dealing between the parties hereto shall constitute a waiver of City's powers, rights or remedies. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

4.4 Except as otherwise provided in this Agreement, no modification or amendment hereof, or waiver or consent hereunder, shall be effective unless made in a writing signed by appropriate officers of the parties hereto.

4.5 The various headings in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

4.6 Any notice, request or consent required hereunder or in connection herewith shall be deemed satisfactorily given if in writing and delivered by hand, overnight delivery courier service or mailed (registered or certified mail) to the parties at their respective addresses set forth below or such other addresses as may be given by any party to the others in writing:

if to Christiana Care: Christiana Care Health Services
501 W. 14th Street
Wilmington, DE 19899
Attention: J. Patrick Fugeman

if to City: City of Wilmington Department of Public Works
Louis L. Redding City/Cty. Bldg., 6th Floor
800 French Street
Wilmington, DE 19801
Attention: Commissioner

with a copy to: City of Wilmington Law Department
 Louis L. Redding City/Cty. Bldg., 9th Floor
 800 French Street
 Wilmington, DE 19801
 Attention: City Solicitor

Any notice, request or consent shall be deemed given upon receipt by the sender thereof of confirmation of hand delivery, if delivered by hand, one (1) business day after deposit with an overnight courier service, or three (3) business days after deposit in the United States mail (registered or certified).

4.7 If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

4.8 No provision shall be construed for or against any party to this Agreement on the ground that such party drafted this Agreement.

4.9 Christiana Care hereby consents that any action or proceeding against it be commenced and maintained in any court within the State of Delaware or in the United States District Court for the District of Delaware by service of process on any such officer; and Christiana Care agrees that the courts of the State of Delaware and the United States District Court for the District of Delaware shall have jurisdiction with respect to the subject matter hereof and the person of Christiana Care and the collateral for the City Funds.

4.10 EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF CITY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR CITY'S ENTERING INTO THIS AGREEMENT.

4.11 CHRISTIANA CARE ACKNOWLEDGES THAT IT HAS HAD THE ASSISTANCE OF COUNSEL IN THE REVIEW AND EXECUTION OF THIS AGREEMENT AND, SPECIFICALLY THE WAIVER OF JURY TRIAL, AND FURTHER ACKNOWLEDGES THAT THE MEANING AND EFFECT OF THE FOREGOING WAIVER OF JURY TRIAL HAS BEEN FULLY EXPLAINED TO CHRISTIANA CARE BY COUNSEL.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives,
have caused this Agreement to be executed as of the day and year first set forth above.

CHRISTIANA CARE HEALTH SERVICES

By: _____

Name:

Title:

Approved as to form this 13 day of
April, 2009.


Senior Assistant City Solicitor

CITY OF WILMINGTON

By: _____

Name: Kash Srinivasan

Title: Commissioner, Department of Public Works

EXHIBIT "A"

LIST OF PLANS FOR CSO IMPROVEMENT PROJECT

PHASE 1

SITE PREPARATION PLAN AT WILMINGTON HOSPITAL

Prepared by:

VanDemark & Lynch, Inc.

Engineers – Planners – Surveyors

C-1	Index Plan and Project Information
C-4, 5, 7	Erosion and Sedimentation Control and Demolition
C-10, 11, 13	Erosion and Sedimentation Control and Site Work
C-16, 17, 18, 19	Cross Sections & Profiles
C-22, 23, 24, 25	Details, Notes & Schedules